

Preparing for Your Mediation

Background on Mediation

Mediation is a process for resolving disputes using a third-party neutral. It is often tried after disputing parties have failed to reach an agreement on their own. Mediation offers a successful alternative to court proceedings. Its benefits include cost effectiveness, time convenience, a high satisfaction rate, and most importantly, the parties' ability to control the outcome. Mediators help create successful agreements by establishing the ground rules for the mediation, monitoring the conversation between the parties, clarifying the parties' concerns, and asking questions to promote greater understanding. However, the most effective mediator cannot guarantee a resolution of the dispute. The mediators do not assign blame nor do they impose a solution. In order to reach agreement and realize the benefits of mediation, parties themselves must come prepared. The purpose of this document is to provide tips on preparing for your mediation. The tips relate to the reasons for conflicts, the steps of mediation, and the skills needed for effective conflict management.

Understanding the Sources of Conflict

Conflicts arise for a number of reasons. Often understanding the cause of the disagreement helps the parties and the mediator explore ways of resolving it. The following lists some causes of conflict and commonly used strategies for resolving these types of conflict:

Data Conflicts:

Often caused by lack of information or misinformation. Parties may misinterpret data or used different assessment approaches. E.g. Two people are arguing over the cost of an item.

In resolving data conflicts, the parties may agree on a process for collecting data or agree to use 3rd party experts to gain outside opinion or break deadlock.

Interest Conflicts:

Often caused by competition over limited resources, such as government agencies competing over their percentage of the annual budget.

In resolving interest conflicts, the parties may search for ways to expand their options or resources, or they may prioritize their interests and trade with each other on interests of less importance.

Tip For Preparing for Your Mediation! Before your mediation, think about what is the cause of your conflict. Is it competing interests, misinformation, relationships, etc? Is it a combination of several different causes? Thinking about the cause of the conflict will help you brainstorm on creative solutions.

The Mediation Process

Preparation includes both knowing what to expect and what is going to be expected of you. Understanding the mediation process unmask these expectations. The mediation process typically has 7 stages. The process helps move the parties from past disputes to a future agreement that meets both sides' interests.

1) In the beginning, the mediator offers background on mediation, explains the stages of mediation, and lays the ground rules for the mediation. The mediator will also address issues of confidentiality and the role of a written agreement.

2) In the second stage, each party has a chance to tell their view of the conflict from start to finish. During this time, only the mediator may interrupt them and only for the purposes of clarifying the issues and promoting understanding. The parties may come with notes for the storytelling phase, but it is not required and it is within the parties' *and* mediator's discretion whether written notes will be shared with the group.

3) Following the storytelling, the mediator helps the parties make an issues list (or set the agenda for the discussion). You may have an issue that is not an issue for the other party but it can still be a part of the agenda and open for discussion. The parties must agree when the agenda is complete.

4) In stage four, the option generating stage, the mediator helps the parties begin working on collaborative problem-solving by brainstorming on possible solutions to the problem. Prior to the mediation, the parties should know their alternatives to a written agreement. It is helpful to have four alternatives in mind during the problem-solving phase. These alternatives help the parties offer realistic solutions to the problem:

- The most likely alternative
- The least likely alternative
- The worst alternative
- The best alternative

For Example: Based on a Neighbor 1's complaint, the police issued Neighbor 2 a noise violation ticket. Neighbor 2's most likely alternative to a mediated agreement is a city fine. This resolution is also the worst alternative to a mediated agreement. However, Neighbor 2's best (and least likely) alternative is if the city dismisses the charge. *If there is a mediated agreement*, it is likely the municipal court will factor in the mediated agreement to the benefit of Neighbor 2 and thus avoid Neighbor 2's worst alternative. Knowing the alternatives will help Neighbor 2 both offer and weigh possible solutions in mediation.

5) (optional) Individual meetings with the mediator are available at any stage in the mediation process. The mediator or either party may call an individual meeting if they feel that they want to share something or strategize in private. Individual meetings are

helpful when there are unexpressed concerns or when the parties feel strong emotions.

6) In stage six, the mediator helps the parties assess the possible solutions and reach an agreement on the issues.

7) Once the parties have reached an agreement on the issues, the mediator helps the parties commit the agreement to writing. In the final stage, the parties approve the written agreement and sign. In most cases, the agreement is an enforceable contract. However, the parties do not have to reach an agreement.

Tips for Preparing for Your Mediation! Prior to mediation, assess your alternatives to reaching a mediated agreement: most likely, least likely, best, worst. Most people want an agreement that is better than the best alternative or an agreement that avoids their worst alternative. Also, prepare your story to share in the story-telling phase. Keep in mind the following conflict management skills.

Effective Conflict Management Skills

Effective conflict management skills in mediation (and in personal negotiations) rest on four principles for behavior: elicit the other side's cooperation, follow courtesy ground rules, use "I" statements, and maintain confidentiality. These four behaviors help the parties create a win-win situation by taking the focus off who is right and who is wrong and refocusing the parties' attention on a mutually acceptable resolution.

First, gaining the other side's cooperation is essential for refocusing their attention towards a future solution that benefits both sides' interests. Understanding the other person's point of view is the first step to gaining their cooperation. Also, present your view in a way that the other party will understand. There are a number of tools to use in reaching mutual understanding and cooperation:

- **Tactful honesty:** Often people believe truth and tactfulness are polar opposites. However, this is untrue. You do not have to choose between being truthful and honest. Tactful statements often involve neutral words. For example: Instead of "he cheated me out of my security deposit", a more neutral and tactful expression may be, "I am seeking a return of my security deposit" or "I am seeking a fair disposition of the security deposit."
- **Keep in mind what you are willing to do in order to exchange for the other side's modification of their behavior.**
- **Listen Carefully.** Here are three active listening techniques:
 1. **Clarify:** To get more information, ask questions. Always ask questions instead of attributing motives to the actions of the other side or relying on your assumptions.

2. Restate: In your own words, repeat what you heard the other person say, including their feelings. Do not dismiss, discount, or interpret what they say.
3. Encouraging: Use neutral or non-threatening words to help another person say more about the situation and how they feel.

Second, the mediation process works most effectively (i.e. helps the parties reach a mutually beneficial agreement) when each party follows the ground rules set by the mediator. In the Mediator's Opening, the mediator typically lays out the ground rules. Common rules include:

- Do not interrupt the other party when they are speaking. Parties are more likely to reach agreement when they listen to one another and feel as if the other side is listening and appreciating what they say.
- Do not deliberately push each other's buttons. This is especially tempting when the parties have a prior and continuing relationship. However, it is not likely to encourage the other party to modify their behavior.
- Keep a future focus. Mediation typically addresses the past, present, and future, but *its goal* is to create an agreement for the future to which each side will comply.

Third, confidentiality is important for helping the parties reach an agreement. Both sides may have personal reasons for not wanting the information discussed in mediation shared with outsiders. It may encourage resolution if the parties agree to keep all communication confidential. It is also important to discuss how an agreement, if one is reached, will be shared with other stakeholders, such as bosses, Homeowner's Associations, etc.

Finally, "I" statements help the parties vent their feelings and views of the situation. They allow the parties to maintain a "self-focus" and to think about solutions to the problem. "I" statements contain four parts:

- "I feel" (state the feeling)
- "when you" (describe the other person's behavior)
- "because" (describe the results of the other person's behavior)
- "and I want" (state what would correct the situation for you)

Tips for Preparing for Your Mediation! Before the mediation, prepare a list of items you are willing to do in exchange for the other side's cooperation. Walk into the mediation process with a focus on reaching a future agreement. Consider the importance of confidentiality and identify information you wish to be kept confidential. Practice using "I" statements and active listening techniques before the mediation.

Conclusion: Using These Tips Today and Tomorrow

Understanding mediation basics and preparing for mediation go hand in hand. Preparation includes understanding the nature of the conflict, knowing the steps of the mediation process, understanding the alternatives to a mediated agreement, preparing stories to share with the group, and practicing mediator skills. Using the above-mentioned tips will promote understanding and increase the potential for resolution. In addition, the tips provide lessons for settling future disputes. Conflict is a part of life. Disputes may again arise with the other side to the mediation. Disputes will definitely arise in all other areas of life. These tips offer suggestions for managing these future conflicts.